

Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUND SURGICAL CENTER
P.S.,

Plaintiff,

v.

AETNA LIFE INSURANCE COMPANY,
AETNA, INC., AMTRAK HEALTH CARE
PLAN, ANCHORAGE SCHOOL
DISTRICT ACTIVE EMPLOYEE OPEN
CHOICE PPO MEDICAL PLAN,
BECHTEL JACOBS COMPANY LLC
HEALTH AND WELFARE PLAN, STATE
OF ALASKA ALASKACARE
EMPLOYEE HEALTH PLAN, BANK OF
AMERICA HEALTH CARE PLAN,
NORDSTROM, INC. CLASSIC PLAN,
STARBUCKS HEALTH CARE PLAN,
COSTCO WHOLESALE HEALTH PLAN,
SOUND HEALTH AND WELLNESS
TRUST PLAN, WESTCO HEALTH
PLAN, LOCKHEED MARTIN
CORPORATION TOTAL HEALTH
PLAN, and ADOBE SYSTEMS, INC.
GROUP WELFARE PLAN

Defendant.

No. 2:17-cv-01190

**AMENDED STIPULATED
PROTECTIVE ORDER**

AMENDED STIPULATED PROTECTIVE ORDER - 1

Case No. No. 2:17-cv-01190
HOU:3840216.1

**GORDON REES SCULLY
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1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Amended Stipulated Protective Order.¹ The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: commercially sensitive or proprietary information and protected health care information related to the medical claims at issue in the litigation that is deemed private under federal and state law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder ("HIPAA") and/or Chapter 70.02 of the Revised Code of Washington.

The parties acknowledge that certain confidential material relating to the specific medical claims at issue in this litigation may be Protected Health Information ("PHI") as defined by HIPAA and the regulations promulgated thereunder. Pursuant to 45 C.F.R. § 164.512 and this order, the parties are authorized to receive, request, transmit, or disclose PHI concerning the specific medical claims at issue in this litigation, subject to all terms of this order. All PHI disclosed under this order must be designated as confidential material. PHI shall include, but is not limited to, claim data, claim forms, grievances, appeals, or other documents or records that contain any patient health information required to be kept

¹ The Anchorage School District Active Employee Open Choice PPO Medical Plan has been dismissed from the case per order dated March 6, 2018 and is no longer a party to the action. (Docket No. 61.)

1 confidential under any state or federal law, including the following subscriber, patient, or
2 member identifiers:

- 3 a. names;
- 4 b. all geographic subdivisions smaller than a State, including street address, city,
5 county, precinct, and zip code;
- 6 c. all elements of dates (except year) for dates directly related to an individual,
7 including birth date, admission date, discharge date, age, and date of death;
- 8 d. telephone numbers;
- 9 e. fax numbers;
- 10 f. electronic mail addresses;
- 11 g. social security numbers;
- 12 h. medical record numbers;
- 13 i. health plan beneficiary numbers;
- 14 j. account numbers;
- 15 k. certificate/license numbers;
- 16 l. vehicle identifiers and serial numbers, including license plate numbers;
- 17 m. device identifiers and serial numbers;
- 18 n. web universal resource locators ("URLs");
- 19 o. internet protocol ("IP") address numbers;
- 20 p. biometric identifiers, including finger and voice prints;
- 21 q. full face photographic images and any comparable images; and/or
- 22 r. any other unique identifying number, characteristic, or code.

23
24 This order does not authorize the disclosure of PHI under any other circumstances.

25 The parties further acknowledge that certain confidential material relating to the
26 specific medical claims at issue in this litigation may contain health care information deemed
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1 personal and sensitive information under Washington law, including but not limited to
2 treatment records and/or information and records related to mental health services. *See, e.g.,*
3 Wash. Rev. Code §§ 70.02.005, 70.02.010, 70.02.230. Pursuant to the terms of this order, the
4 parties are authorized to receive, request, transmit, or disclose such health care information
5 with respect to the specific medical claims at issue in this litigation, subject to all terms of this
6 order. ~~All health care information disclosed under this order must be designated as~~
7 confidential material. This order does not authorize the disclosure of health care information
8 under any other circumstances.

9 Notwithstanding the foregoing, neither party may be compelled to disclose information
10 and records related to sexually transmitted diseases unless specifically authorized by the
11 patient and/or upon further order of this court after application showing good cause therefor.
12 *See* Wash. Rev. Code § 70.02.220.

13 3. SCOPE

14 The protections conferred by this agreement cover not only confidential material (as
15 defined above), but also (1) any information copied or extracted from confidential material;
16 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
17 testimony, conversations, or presentations by parties or their counsel that might reveal
18 confidential material.

19 However, the protections conferred by this agreement do not cover information that is
20 in the public domain or becomes part of the public domain through trial or otherwise.

21 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

22 4.1 Basic Principles. A receiving party may use confidential material that is
23 disclosed or produced by another party or by a non-party in connection with this case only for
24 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
25 disclosed only to the categories of persons and under the conditions described in this
26 agreement. Confidential material must be stored and maintained by a receiving party at a
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1 location and in a secure manner that ensures that access is limited to the persons authorized
2 under this agreement.

3 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the designating party, a receiving party may
5 disclose any confidential material only to:

6 (a) ~~the receiving party's counsel of record in this action, as well as~~
7 employees of counsel to whom it is reasonably necessary to disclose the information for this
8 litigation;

9 (b) the officers, directors, and employees (including in house counsel) of
10 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the
11 parties agree that a particular document or material produced is for Attorney's Eyes Only and
12 is so designated;

13 (c) experts and consultants to whom disclosure is reasonably necessary for
14 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
15 (Exhibit A);

16 (d) the court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the duplication
18 of confidential material, provided that counsel for the party retaining the copy or imaging
19 service instructs the service not to disclose any confidential material to third parties and to
20 immediately return, or certify destruction of, all originals and copies of any confidential
21 material;

22 (f) during their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
24 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.
25 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential

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1 material must be separately bound by the court reporter and may not be disclosed to anyone
2 except as permitted under this agreement;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Filing Confidential Material. Before filing confidential material or discussing
6 or referencing such material in court filings, the filing party shall confer with the designating
7 party to determine whether the designating party will remove the confidential designation,
8 whether the document can be redacted, or whether a motion to seal or stipulation and proposed
9 order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and
10 the standards that will be applied when a party seeks permission from the court to file material
11 under seal.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
14 party or non-party that designates information or items for protection under this agreement
15 must take care to limit any such designation to specific material that qualifies under the
16 appropriate standards. The designating party must designate for protection only those parts of
17 material, documents, items, or oral or written communications that qualify, so that other
18 portions of the material, documents, items, or communications for which protection is not
19 warranted are not swept unjustifiably within the ambit of this agreement.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
21 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
22 unnecessarily encumber or delay the case development process or to impose unnecessary
23 expenses and burdens on other parties) expose the designating party to sanctions.

24 If it comes to a designating party's attention that information or items that it designated
25 for protection do not qualify for protection, the designating party must promptly notify all
26 other parties that it is withdrawing the mistaken designation.

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28 AMENDED STIPULATED PROTECTIVE ORDER - 6

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
3 ordered, disclosure or discovery material that qualifies for protection under this agreement
4 must be clearly so designated before or when the material is disclosed or produced.

5 (a) Information in documentary form: (e.g., paper or electronic documents
6 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
8 contains confidential material. If only a portion or portions of the material on a page qualifies
9 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
10 making appropriate markings in the margins).

11 (b) Testimony given in deposition or in other pretrial proceedings: the
12 parties and any participating non-parties must identify on the record, during the deposition or
13 other pretrial proceeding, all protected testimony, without prejudice to their right to so
14 designate other testimony after reviewing the transcript. Any party or non-party may, within
15 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,
16 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party
17 desires to protect confidential information at trial, the issue should be addressed during the
18 pre-trial conference.

19 (c) Other tangible items: the producing party must affix in a prominent
20 place on the exterior of the container or containers in which the information or item is stored
21 the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant
22 protection, the producing party, to the extent practicable, shall identify the protected
23 portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
25 designate qualified information or items does not, standing alone, waive the designating
26 party's right to secure protection under this agreement for such material. Upon timely
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1 correction of a designation, the receiving party must make reasonable efforts to ensure that the
2 material is treated in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
11 regarding confidential designations without court involvement. Any motion regarding
12 confidential designations or for a protective order must include a certification, in the motion or
13 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
14 conference with other affected parties in an effort to resolve the dispute without court action.
15 The certification must list the date, manner, and participants to the conference. A good faith
16 effort to confer requires a face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
18 intervention, the designating party may file and serve a motion to retain confidentiality under
19 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
20 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
21 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
22 burdens on other parties) may expose the challenging party to sanctions. All parties shall
23 continue to maintain the material in question as confidential until the court rules on the
24 challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this action as
5 "CONFIDENTIAL," that party must:

6 (a) promptly notify the designating party in writing and include a copy of
7 the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order
9 to issue in the other litigation that some or all of the material covered by the subpoena or order
10 is subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued
12 by the designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
15 confidential material to any person or in any circumstance not authorized under this
16 agreement, the receiving party must immediately (a) notify in writing the designating party of
17 the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
18 protected material, (c) inform the person or persons to whom unauthorized disclosures were
19 made of all the terms of this agreement, and (d) request that such person or persons execute
20 the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

21 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
22 PROTECTED MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
26 provision is not intended to modify whatever procedure may be established in an e-discovery
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1 order or agreement that provides for production without prior privilege review. The parties
2 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

4 Within 60 days after the termination of this action, including all appeals, each
5 receiving party must return all confidential material to the producing party, including all
6 copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate
7 methods of destruction.

8 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
9 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
10 deposition and trial exhibits (except for exhibits containing PHI, which must be redacted,
11 returned, or destroyed), expert reports, attorney work product, and consultant and expert work
12 product, even if such materials contain confidential material.

13 The confidentiality obligations imposed by this agreement shall remain in effect until a
14 designating party agrees otherwise in writing or a court orders otherwise.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16
17 AXELROD LLP

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19 DATED: April 13, 2018

/s/ Robert J. Axelrod
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HOU:3840216.1

GORDON REES SCULLY
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DATED: April 13, 2018

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DATED: April 13, 2018

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DATED: April 13, 2018

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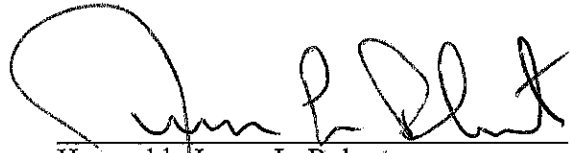
AMENDED STIPULATED PROTECTIVE ORDER - 12

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

7 DATED: 16 April 2018

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Honorable James L. Robart
United States District Court Judge

AMENDED STIPULATED PROTECTIVE ORDER - 13

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Western District of Washington on
[date] in the case of *Puget Sound Surgical Center P.S. v. Aetna Life Insurance Company, et*
al., No. 2:17-cv-01190. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
will not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

Dated this _____ day of _____, 2018.

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AMENDED STIPULATED PROTECTIVE ORDER - 14

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